

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

IN RE: ASHLEY MADISON CUSTOMER  
DATA SECURITY BREACH LITIGATION

This Document Relates to:

## ALL CASES

MDL No. 2669

Case No. 4:15-MD-02669-JAR

## SUBMISSION OF COURT ORDERED ACCOUNTING OF CLAIMS PAID AND AMOUNTS DISTRIBUTED TO CHARITIES

Pursuant to the Court’s instructions in its Order Granting Final Approval of Settlement, Cy Pres Distribution, and Award of Attorneys Fees and Service Awards to the Class Representatives (Dkt. No. 383) (the “Final Approval Order”), Settlement Class Counsel hereby submits an accounting of the claims paid and the amounts distributed from the Settlement Fund.

On November 20, 2017, the Court issued its Final Approval Order. That Order instructed that attorney’s fees in the amount of \$3,733,333.33, and costs and expenses in the amount of \$78,032.38, be paid to Class Counsel and other attorneys who performed common benefit work on behalf of the class. Final Approval Order, pp. 7-8. The Final Approval Order also instructed that, after deductions for attorneys’ fees and costs, Class Representative Service Awards, any further Administration Costs, and any other Court-approved costs, expenses, or amounts, the balance of the non-reversionary \$11.2 million settlement fund should be distributed to Settlement Class Members. Final Approval Order, p. 8. The Court furthered ordered that “if the amounts paid in cash distributions do not exhaust the settlement fund by the end of the claims deadline, the remainder will be donated to Internal Revenue Code Section 501(c)(3) charitable digital privacy

or similar organization(s) jointly chosen by Class Settlement Counsel and Avid (the “Charities”).”  
Final Approval Order, at p. 4.

### **Distribution of Attorney Fees and Expenses**

Pursuant to the Court’s Final Approval Order and the directive of Class Settlement Counsel, Angeion distributed one third (1/3) of the total settlement fund in the amount of \$3,733,333.33, plus expenses in the amount of \$78,032.38, in accordance with the terms of the Settlement Agreement and as directed by this Court. See Declaration of Brian Devery, at ¶7, dated January 31, 2018, attached as Exhibit A (“Devery Decl.”).

### **Class Representative Incentive Award Distribution**

Pursuant to the Court’s Final Approval Order, Angeion distributed an incentive award of \$5,000, to each of the Plaintiffs named in the Consolidated Complaint, including: Brian Farr, Steven Coward, Marc Benefield, Nhung Truong, Gustavo Alfaro, David Yagel, John Hiles III, Matthew Lisuzzo, Britt Garrett, Christopher Russell, David Miller, James Mike Shows, Todd Witengier, Byron Goetting, Marvin Cabiness, Keith Macomber, Paul Jack, and Anthony Imbarrato (the “Class Representatives”). Devery Decl., at ¶8. The distribution of incentive awards to Class Representatives was done in accordance with the terms of the Settlement Agreement and as directed by this Court. *Id.*

### **Claim Form Submissions, Processing, and Distributions**

The deadline for Class Members to timely file claims in the instant matter was January 2, 2018. Devery Decl., at ¶9. Angeion received a total of 4,236 claims. *Id.*<sup>1</sup> In accordance with the terms of the Settlement Agreement and as directed by this Court, Angeion reviewed the claims submitted and determined that, among the 4,236 claims submitted, a total of 3,861 claims were valid claims for losses pursuant to the terms of the Settlement Agreement. Devery Decl., at ¶10.

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<sup>1</sup> Any claim forms that were submitted on the Settlement Website were received by January 2, 2018. Any claim forms that were submitted by mail and postmarked by January 2, 2018 would have arrived by the date of this submission, so the total claims number will not change. Devery Decl., at ¶9.

The total benefits claimed by class members through those valid claims equaled \$3,557,961.66. *Id.* Pursuant to the Court's Final Approval Order, Angeion distributed this \$3,557,961.66, to individual class members that submitted valid claims. Devery Decl., at ¶11. These distributions were done in accordance with the terms of the Settlement Agreement and as directed by this Court. *Id.* Distributions to Class Members are valid for 90 days from the date of issuance (*e.g.*, checks are void after 90 days). *Id.* Any request for reissue of a distribution will be valid through the original void date or for 30 days from issuance whichever is greater. *Id.*

#### **Current Total Administrative Fees Invoiced**

Angeion has processed the claims as described above and will continue to administer the Settlement Fund, including by working on identifying any uncashed checks, answering claimant questions, and communicating and responding to Settlement Class Counsel. Devery Decl., at ¶12. Angeion will also initiate a second *cy pres* distribution that will include any unused portion of the \$150,000 holdback (discussed below), along with any settlement funds that go unclaimed due to the expiry of checks after ninety (90) days post-issuance. *Id.* As such, Angeion is unable to provide a definitive and accurate final invoice for the total administration fees that will be incurred in completing this process. *Id.* As of November 30, 2017 the total amount of administration expenses invoiced and approved is \$270,561.67. *Id.* In order to establish the final calculation and allocation of funds, administration expenses incurred and billed after November 30, 2017, will be assessed against the reserve fund as allocated above. *Id.*

#### **Settlement Fund Reserve**

Angeion, with the consent Settlement Class Counsel and Defendants' Counsel, and as is customarily done with settlement funds in class cases, has reserved the sum of \$150,000 from the Settlement Fund to pay for administration expenses incurred and not yet invoiced, future post-distribution administration expenses, and any additional distributions that may be deemed necessary (the "Reserve"). Devery Decl., at ¶13. After the final void date for settlement distribution payments, which is ninety (90) days from the date of issuance and the expiration of any distribution that is reissued upon class member request, funds remaining in the Reserve shall

be combined with all unnegotiated distribution payments (*i.e.* uncashed checks) and allocated equally to the below named *cy pres* recipients. *Id.* For example, if \$100,000 remains in the Settlement Fund at the end of this process, an additional \$12,500 will go to each of the *cy pres* recipients. *Id.* This second distribution will supplement the distribution that has already occurred and which is detailed immediately below. *Id.*

### **Cy Pres Distribution**

In total, and as detailed above, the following distributions were made pursuant to the Court's Final Approval Order:

<b>Total Distributions</b>	
Gross Settlement Fund	\$ 11,200,000.00
Atty Fees	\$ 3,733,333.33
Atty Expenses	\$ 78,032.38
Admin Fees	\$ 270,561.70
Incentive Awards	\$ 90,000.00
Distribution	\$ 3,557,961.66
Reserve	\$ 150,000.00
<b>Remainder Left for Cy Pres →</b>	<b>\$ 3,320,110.93</b>

Devery Decl., at ¶14. Pursuant to the Court's Final Approval Order, Angeion distributed the remaining funds (those not distributed to class members, as attorney's fees and costs, or for administrative expenses) to the eight *cy pres* recipients named in the Final Approval Order. Devery Decl., at ¶15. The distributions were made as detailed below:

<b>Cy Pres Recipient</b>	<b>Amount</b>
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Electronic Frontier Foundation	\$415,013.86
National Consumers League	\$415,013.86
Public Justice	\$415,013.86
GirlSpring	\$415,013.87
No Bully	\$415,013.87
Berkman Klein Center for Internet & Society at Harvard University	\$415,013.87
Center for Internet Society at Stanford Law School	\$415,013.87
Electronic Privacy Information Center	\$415,013.87

Devery Decl., at ¶15. The distributions to the *cy pres* recipients took place in accordance with the terms of the Settlement Agreement and as directed by this Court. *Id.*

Angeion has represented that it will continue to keep Settlement Class Counsel apprised of the status of the distribution, including payments made, expenses incurred throughout the distribution process, and any unnegotiated distribution payments. Devery Decl., at ¶16. Angeion shall report to Settlement Class Counsel any unclaimed funds and/or remainder in the Reserve Fund for distribution to the *cy pres* recipients within 14 days of the expiration of the payments issued to class members as detailed above. *Id.*

Once all payments are made, expenses incurred are accounted for, and any unnegotiated distribution payments are known, Settlement Class Counsel will work with Angeion to issue a second and equal *pro rata cy pres* distribution to each of the Charities to close out the Settlement Fund. Following that distribution, Settlement Class Counsel will file a second notice of accounting with this Court to account for and document the distributions done with the Reserve. That notice will be filed with this Court no later than 150 days from the date of this filing, which is July 2, 2018.

Date: February 2, 2018

Respectfully Submitted,

THE DRISCOLL FIRM, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2018, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all parties.

/s/ John J. Driscoll